

No. 12347

United States
Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.
ALL AMERICAN AIRWAYS, INC.,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

FILED

OCT 28 1949

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

JAMES M. CARTER,

United States Attorney,

E. H. MITCHELL,

EDWARD R. McHALE,

Assistants U. S. Attorney,

EUGENE HARPOLE,

ROBERT D. SCOTT,

JAMES D. PETTUS,

Special Attorneys, Bureau of Internal
Revenue,

600 U. S. Post Office & Court House
Bldg.

Los Angeles 12, Calif.

For Appellee:

GUTHRIE, DARLING & SHATTUCK,

737 Pacific Mutual Bldg.

Los Angeles 14, Calif. [1*]

* Page numbering appearing at bottom of page of original certified Transcript of Record.

In the District Court of the United States in and
for the Southern District of California, Central
Division

No. 8860-W

ALL AMERICAN AIRWAYS, INC., a Corpora-
tion,

Plaintiff,

vs.

UNITED STATES OF AMERICA, JANE DOE,
JOHN DOE, RICHARD BLACK, RICHARD
ROE COMPANY, JIM GREEN COMPANY,
JOHN DOE and RICHARD ROE, a Co-
Partnership,

Defendants.

COMPLAINT TO QUIET TITLE
TO PERSONAL PROPERTY

(Pursuant to 28 USC 2410)

Comes now All American Airways, Inc., a cor-
poration, plaintiff herein, and for cause of action
against the defendants and each of them, alleges:

I.

Plaintiff is a corporation organized under the
laws of the State of Delaware.

II.

This action is instituted against the defendant
United States of American under and pursuant to
the provisions of Title 28 USC, Sec. 2410. United

States of America will hereinafter be referred to as the defendant. The purpose of this action is to quiet title in plaintiff and to secure an adjudication as to a lien [2] claimed by the defendant against the personal property hereinafter described, owned by plaintiff.

III.

The defendants Jane Doe, John Doe, Richard Black, Richard Roe Company, Jim Green Company, John Doe & Richard Roe, a co-partnership, are sued herein under fictitious names, their true names being unknown to plaintiff. Upon ascertainment of said true names plaintiff will ask leave of Court to amend its complaint accordingly. Said defendants may claim some interest in and to the personal property hereinafter described.

IV.

Plaintiff is now and since the dates hereinafter designated has been owner of those certain airplanes described as follows:

1. One Douglas DC-3, No. NC54312, purchased May 19, 1948;
2. One Douglas DC-3, No. NC49277, purchased May 19, 1948;
3. One Douglas DC-3, No. NC16839, purchased June 15, 1948.

Each of the above described airplanes is now in the plant of Douglas Aircraft, at Santa Monica, California, for purpose of overhaul and modification.

V.

The above described airplanes are civil aircraft subject to the provisions of the Civil Aeronautics Act (Act of June 23, 1938, C601, 52 Stat. 977, 49 USC 401, et seq., as amended) and subject to the provisions of Section 503 of said Act (49 USCA Sec. 523), which statute provides for a system of recording all conveyances affecting the title to or interest in any civil aircraft of the United States. Prior to and at the time of purchasing the airplanes above specifically described plaintiff inspected the records of the Civil Aeronautics Board, Civil Aeronautics Administration, and Civil Aeronautics Authority in the Department of Commerce of the United States, all of which for convenience will be hereinafter referred to as [3] Civil Aeronautics Board, concerning the registration of aircraft and recordation of aircraft ownership and said Board's record with respect to the title and status of title and ownership of the above described airplanes. On and prior to June 15, 1948, there was no record of any claim or notice of lien or claim by defendant of any interest or lien in and to any of said airplanes, with the Civil Aeronautics Board.

VI.

Plaintiff on and prior to June 15, 1948 had no notice that defendant claimed any lien or interest of any kind in and to any of said airplanes. For a good and valuable consideration and in good faith and without notice of any claim or interest of de-

fendant, plaintiff purchased said airplanes above described.

VII.

On April 8, 1948, said airplanes were owned Northern Airlines, Inc., and defendant has informed plaintiff and on such information plaintiff alleges that said airplanes were, on April 8, 1948, physically in the City of Seattle, Kings County, State of Washington, the corporate domicile of Northern Airlines, Inc.

VIII.

The defendant has furnished plaintiff the following information and on such information plaintiff alleges that the Commissioner of Internal Revenue assessed withholding taxes for the fourth quarter of the taxable year 1947 against Northern Airlines, Inc., in the sum of \$6,340.58, together with a penalty of \$634.06 and interest of \$60.88, or an aggregate sum of \$7,035.52, on or about the first day of April, 1948, and the Commissioner's assessment list carrying said tax was received in the office of the Collector of Internal Revenue at Tacoma, Washington, on the first day of April, 1948. The Commissioner of Internal Revenue assessed Federal insurance contributions taxes against Northern Airlines, [4] Inc., for the fourth quarter of the year 1947 in the sum of \$760.04, together with a penalty thereon of \$76.00 and interest of \$7.30, or an aggregate sum of \$843.36, on or about the first day of April, 1948, and the Commissioner's assessment list carrying

said tax was received in the Office of the Collector of Internal Revenue at Tacoma, Washington, on the fifth day of April, 1948. The Commissioner of Internal Revenue assessed Federal unemployment taxes for the year 1946 against Northern Airlines, Inc., in the sum of \$727.03, together with a penalty of \$36.35 and interest of \$50.60, or an aggregate assessment of \$813.98, on or about the first day of April, 1948, and the Commissioner's assessment list carrying said tax was received in the office of the Collector of Internal Revenue at Tacoma, Washington, on April 5, 1948. The Commissioner of Internal Revenue assessed transportation of property tax against Northern Airlines, Inc., for the period from October, 1947, through January, 1948, both months inclusive, in the sum of \$18,812.27, together with a penalty of \$2,764.16 and interest of \$278.53, or an aggregate assessment of transportation of property taxes, penalty and interest of \$21,854.96, on or about April 3, 1948. The Commissioner of Internal Revenue's assessment list carrying said transportation of property tax was received in the office of the Collector of Internal Revenue at Tacoma, Washington, on April 7, 1948. That upon receipt of said Commissioner of Internal Revenue's assessment list, the Collector of Internal Revenue at Tacoma, Washington, issued notice and demand for the payment of said taxes, penalties, and interest assessed as aforesaid, but no part of the same has been paid and the whole thereof remains assessed and unpaid. That thereafter and

on the eighth day of April, 1948, the Collector of Internal Revenue filed a notice of Federal tax lien in the office of the Auditor of King County, State of Washington, and on the thirteenth of April, 1948, he filed a like notice in the office of the Clerk of the United States District Court for the Western District of the State of Washington, [5] a copy of said notice of lien is hereto attached and marked Exhibit A.

IX.

However, on and prior to June 15, 1948, defendant had not caused to be recorded any notice of such lien with the Civil Aeronautics Board in accordance with the provisions of Sec. 503 of Civil Aeronautics Act (49 USCA 523). Plaintiff at the time it purchased the airplanes as above alleged, had no notice of said claimed tax lien or that Northern Airlines, Inc., owed defendant any unpaid taxes or any money.

X.

On September 2, 1948, defendant caused to be filed with Douglas Aircraft at Santa Monica, a levy of lien on said three airplanes.

XI.

By reason of the foregoing, defendant claims and asserts some right, title, lien or interest in and to said personal property adverse to plaintiff. Defendant has no estate, right, title, interest or lien in and to said airplanes or any of them.

Wherefore, plaintiff prays that defendants and

each of them be required to set forth the nature of their respective claims and that all adverse claims of said defendants be determined by decree of this court; and that by said decree it be declared that none of the defendants has any estate, right, title, interest or lien whatever in and to said airplanes or any of said airplanes adverse to plaintiff, and that defendants and each of them be debarred forever from asserting any claim whatever in and to any of said airplanes; that judgment be entered in favor of plaintiff, that it recover its costs of suit, and have such other relief as the court may deem meet and equitable.

Dated: Los Angeles, California, November 9, 1948.

GUTHRIE, DARLING &
SHATTUCK,

By /s/ MILO V. OLSON,
Attorneys for Plaintiff. [6]

EXHIBIT A

Copy

Notice of Tax Lien(s) Under Internal
Revenue Laws
No. 11783

United States Internal Revenue,
District of Washington,

April 7, 1948.

Pursuant to the provisions of Sections 3670, 3671, and 3672 of the Internal Revenue Code of the United States, notice is hereby given that there

have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statutes the amount (or amounts) of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is (or are) a lien (or liens) in favor of the United States upon all property and rights to property belonging to said taxpayer, to wit:

Name of taxpayer, Northen Airlines, Inc.

Residence or place of business, Boeing Field, Seattle, Washington.

Nature of Tax	Year or Taxable Period Ended	Date Assessment List Received	Amount of Assessment	
Withholding Tax Employment	Qtr. 12-31-47	4/1/48	T	6340.58
			P	634.06
			I	60.88
Tax—FICA	Qtr. 12-31-47	4/5/48	T	760.04
			P	76.00
			I	7.30
Employment Tax—FUTA	Year 1946 Suppl.	4/5/48	T	727.03
			P	36.35
			I	50.60
Trans. Prop. Tax	Oct '47 thru Jan '48	4/7/48	T	18812.27
			P	2764.16
			I	278.53
		Filing Fee		.50
Total				30548.30

I hereby certify that this is a true copy of Lien #11783 for Northern Airlines, Inc., Boeing Field, Seattle, Washington, prepared on April 7, 1948.

/s/ CLARK SQUIRE.

Subscribed and sworn to before me this 30th day of August, 1948.

[Seal]

MARGARET C. JOSSELYN
Collector.

Certificate of Officer Authorized by Law to Take Acknowledgments.

Notary Public in and for the State of Washington,
residing at Tacoma, Washington.

State of Washington,
County of Pierce—ss.

Before me, this day personally appeared Clark Squire, to me well known, and well known by me to be the person described in and who executed the foregoing instrument as Collector of Internal Revenue for the Collection District of Washington; and he acknowledged before me that he executed the same as such Collector of Internal Revenue, and for the purpose herein expressed.

Witness my hand and official seal at Tacoma, Washington, in the County and State aforesaid, this 7th day of April, 1948.

[Seal]

/s/ S. J. KALIVAS,
Notary Public.

2 Copies—Auditor of King County.

(Filed 4/8/48 #2297356)

2 Copies—Clerk of U.S. Dist. Court.

(Filed 4/13/48.)

Affidavit of Service by of mail attached. .

[Endorsed]: Filed Nov. 10, 1948. [7]

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes Now the United States of America, defendant herein, and moves the Court as follows:

(1) To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted. This motion is based upon the files and pleadings in the case, a memorandum of points and authorities in support of the motion being filed by defendant concurrently herewith.

Dated: This 14th day of January, 1949.

JAMES M. CARTER,

United States Attorney.

E. H. MITCHELL,

Assistant U. S. Attorney.

EUGENE HARPOLE and

ROBERT D. SCOTT,

Special Attorneys, Bureau of
Internal Revenue.

By /s/ EUGENE HARPOLE,

Attorneys for Defendant

United States of America.

Affidavit of Service by mail attached.

[Endorsed]: Filed Jan. 14, 1949. [8]

At a stated term, to wit: The February Term, A.D. 1949, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the

Court Room thereof, in the City of Los Angeles on Monday, the 16th day of May, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Jacob Weinberger,
District Judge.

[Title of Cause.]

For further hearing motion of defendant, filed Jan. 14, 1949, to dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted; M. V. Olson, Esq., appearing as counsel for plaintiff; R. D. Scott, Spec. Att'y, Bureau of Internal Revenue, appearing as counsel for Gov't; Court orders said motion denied without prejudice, defendant to have twenty days to answer complaint. [10]

[Title of District Court and Cause.]

NOTICE OF RULING

To the Defendant United States of America, and
to James M. Carter, E. H. Mitchell, Eugene
Harpole, Robert D. Scott and James D. Pettus,
Its Attorneys:

You and Each of You Will Please Take Notice that on Monday, May 16, 1949, in the above-entitled matter, the Court, by the Honorable Jacob Weinberger, United States District Judge for the Southern District of California, by an order duly given and made, denied without prejudice the motion of

defendant United States of America to dismiss the action, and by said order the court granted defendant twenty days within which to answer the plaintiff's complaint on file herein.

Dated: May 16, 1949.

GUTHRIE, DARLING &
SHATTUCK,

By /s/ MILO V. OLSON,
Attorneys for Plaintiff.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed May 17, 1949. [11]

[Title of District Court and Cause.]

STIPULATION

It Is Stipulated between plaintiff and defendant United States of America through their attorneys of record:

1. That defendant United States of America will not file an answer or other or further pleading to plaintiff's complaint.
2. That the action may be dismissed as to all fictitiously named defendants.
3. That plaintiff may apply forthwith for judgment in the form attached hereto marked Exhibit A and that the judgment may be signed and entered by the court exparte and without service of a three-day written notice as provided by Rule 55 (b)(2), Federal Rules of Civil Procedure.

4. That the judgment may be signed and entered on the allegations in plaintiff's complaint without supporting evidence [13] and without other or further compliance with rule 55(e), Federal Rules of Civil Procedure.

Dated: June 3rd, 1949.

JAMES M. CARTER,

United States Attorney.

E. H. MITCHELL,

Assistant U. S. Attorney.

EUGENE HARPOLE and

ROBERT D. SCOTT,

Special Attorneys, Bureau of
Internal Revenue.

By /s/ EUGENE HARPOLE,

Attorneys for Defendant,

United States of America.

GUTHRIE, DARLING &

SHATTUCK,

By /s/ MILO V. OLSON,

Attorneys for Plaintiff.

[Endorsed]: Filed June 7, 1949.

[Title of District Court and Cause.]

JUDGMENT

The motion of defendant United States of America to dismiss the above-entitled action having been argued, heard and denied on May 16, 1949, and plaintiff and defendant United States of America having stipulated in the record of the above-entitled

proceeding that no answer or further pleading to plaintiff's complaint will be filed by defendant United States of America, and the court having been fully advised and good cause therefor appearing,

It Is Found, Ordered, Adjudged and Decreed:

1. That this Court has jurisdiction of the cause of action set forth in plaintiff's complaint.

2. That all of the allegations in plaintiff's complaint are true, except the allegations in Paragraph III thereof which are found to be immaterial.

3. That plaintiff is the owner of the following described [18] airplanes which are the subject matter of the within action:

One Douglas DC-3, No. NC54312, purchased May 19, 1948;

One Douglas DC-3, No. NC49277, purchased May 19, 1948;

One Douglas DC-3, No. NC16839, purchased June 15, 1948.

4. That the action be and it is dismissed as against the fictitiously named defendants.

5. That plaintiff is a bona fide purchaser of the airplanes described in Paragraph 3 of this judgment without notice of any claim of defendant, United States of America, in and to any of said airplanes because of the failure of defendant, United States of America, to record any notice or claim of its tax lien or liens against Northern Airlines, Inc., with the Civil Aeronautics Board

or the administrator of the Civil Aeronautics Board in accordance with the provisions of the Civil Aeronautics Act prior to the time plaintiff acquired ownership of said airplanes.

6. That defendant United States of America has no estate, right, title, interest or lien in or to any of the airplanes described in Paragraph 3 of this judgment, prior, superior or adverse to the estate, right, title and interest of plaintiff.

7. That defendant United States of America and all persons, firms, corporations and bodies politic acting under or through defendant United States of America be and they are forever barred and enjoined from asserting any claim in or to any of the airplanes described in Paragraph 3 of this judgment as against plaintiff's interest and ownership therein, by reason of or arising out of any unpaid taxes owing or claimed to be owed by Northern Airlines, Inc., to defendant United States of America.

8. That plaintiff's right, title, interest and possession in and to the airplanes described in Paragraph 3 of this judgment be and they are quieted against any right, title, interest, lien or claim of defendant United States of America or any person, firm, corporation or body politic acting under or through defendant United States of America.

Dated: June 7, 1949.

/s/ JACOB WEINBERGER,
U. S. District Judge.

[Endorsed]: Filed June 7, 1949. [19]

[Title of District Court and Cause.]

WRITTEN NOTICE OF ENTRY OF
JUDGMENT

To the Defendant United States of America, and
to James M. Carter, E. H. Mitchell, Eugene
Harpole, Robert D. Scott and James D. Pettus,
Its Attorneys:

You and Each of You Will Please Take Notice
that on Tuesday, June 7, 1949, in the above-entitled
action, in Judgment Book 58, Page 658, judgment
was duly entered, said judgment is in favor of the
plaintiff and against the defendant, United States
of America.

Dated: June 10th, 1949.

GUTHRIE, DARLING &
SHATTUCK,

By /s/ MILO V. OLSON,
Attorneys for Plaintiff.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed June 10, 1949. [20]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given That the United States
of America, defendant herein, hereby appeals to
the United States Court of Appeals for the Ninth
Circuit from the final judgment entered herein by
this Court on June 7, 1949.

Dated: This 1st day of August, 1949.

JAMES M. CARTER,
United States Attorney.

E. H. MITCHELL and
EDWARD R. McHALE,
Assistant U. S. Attorneys.

EUGENE HARPOLE,
ROBERT D. SCOTT and
JAMES D. PETTUS,
Special Attorneys.

By /s/ EUGENE HARPOLE,
Attorneys for Defendant,
United States of America.

[Endorsed]: Filed Aug. 1, 1949. [22]

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF CON-
TENTS OF RECORD ON APPEAL

Comes Now the United States of America, Defendant and appellant herein, and hereby designates that the complete record consisting of the following be included in and contained in the record on appeal in the above-entitled cause:

1. Complaint.
2. Motion to Dismiss dated January 14, 1949.
3. Notice of Ruling dated May 16, 1949.
4. Stipulation dated June 3, 1949.
5. Judgment entered June 7, 1949.

6. Written Notice of Entry of Judgment dated June 10, 1949.

7. Notice of Appeal. [23]

8. This Designation.

9. Clerk's Certificate.

Dated: This 18th day of August, 1949.

JAMES M. CARTER,

United States Attorney.

E. H. MITCHELL and

EDWARD R. McHALE,

Assistant U. S. Attorneys.

EUGENE HARPOLE,

ROBERT D. SCOTT and

JAMES D. PETTUS,

Special Attorneys, Bureau of
Internal Revenue.

By /s/ EUGENE HARPOLE,

Attorneys for Defendant,

United States of America.

STIPULATION

It Is Hereby Stipulated for and on behalf of All American Airways, Inc., plaintiff and appellee herein, that the foregoing items, as designated by appellant, shall be included in and constitute the record on appeal in the above-entitled cause.

Dated: This 15th day of August, 1949.

GUTHRIE, DARLING &

SHATTUCK,

By /s/ MILO V. OLSON,

Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 18, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 24, inclusive, contain the original Complaint to Quiet Title to Personal Property; Motion to Dismiss; Notice of Ruling; Stipulation; Judgment; Written Notice of Entry of Judgment; Notice of Appeal; Designation of Contents of Record on Appeal and a full, true and correct copy of Minute Order Entered May 16, 1949, which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 7th day of Sept., A.D. 1949.

EDMUND L. SMITH,
Clerk.

[Seal] By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 12347. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. All American Airways, Inc., Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed September 9, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Undocketed

UNITED STATES OF AMERICA,

Appellant,

vs.

ALL AMERICAN AIRWAYS, INC.,

a corporation,

Appellee.

APPELLANT'S STATEMENT OF POINTS
TO BE RELIED UPON ON APPEAL

Pursuant to the provisions of Rule 19(6) of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit, Appellant hereby designates the following points upon which it intends to rely in its appeal in the above entitled case:

1. The District Court erred in denying appellant's Motion to Dismiss.
2. The District Court erred in finding and concluding that plaintiff-appellee is a bona fide purchaser of the airplanes involved herein without notice of the claim of the United States because of the failure of the United States to record notice or claim of its lien or liens for taxes against Northern Airlines, Inc., with the Civil Aeronautics Board or the administrator of the Civil Aeronautics Board in accordance with the provisions of the Civil Aeronautics

Act prior to the time plaintiff acquired ownership of said airplanes.

3. The District Court erred in holding that the United States has no lien prior, superior or adverse to the estate, right, title and interest of the plaintiff-appellee, in or to any of the airplanes involved herein.
4. The District Court erred in failing to hold that the United States acquired tax liens upon the airplanes involved herein by virtue of the provisions of Section 3670 of the Internal Revenue Code, and that such liens, pursuant to Section 3672 of the Internal Revenue Code and the laws of the State of Washington, are by virtue of the recordation of notice thereof in the office of the Auditor of King County, State of Washington, prior to the time plaintiff-appellee acquired ownership, valid against the plaintiff-appellee, a subsequent purchaser.
5. The District Court erred in enjoining the United States from asserting a claim in or to the airplanes involved herein as against plaintiff-appellee's interest and ownership therein by reason of or arising out of unpaid taxes owed by Northern Airlines, Inc., to the United States.
6. The District Court erred in decreeing that plaintiff-appellee's right, title, interest and possession in and to the airplanes involved herein are quieted against any right, title, interest, lien or claim of the United States.

Dated: This 1st day of September, 1949.

JAMES M. CARTER,
United States Attorney,
E. H. MITCHELL and
EDWARD R. McHALE,
Assistant U. S. Attorneys,
EUGENE HARPOLE,
ROBERT D. SCOTT and
JAMES D. PETTUS,
Special Attorneys, Bureau of
Internal Revenue.

By /s/ ROBERT D. SCOTT,
Attorneys for Appellant,
United States of America.

Received copy of the within Appellant's Statement of Points to be Relied Upon on Appeal this 1 day of September, 1949.

GUTHRIE, DARLING &
SHATTUCK,

By: /s/ EDWARD SHATTUCK,
Attorneys for Appellee.

[Endorsed]: Filed U.S.C.A. Sept. 9, 1949.

[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF PARTS OF
RECORD BELIEVED NECESSARY FOR
CONSIDERATION ON APPEAL AND TO
BE PRINTED.

Pursuant to Rule 19(6) of this Court, Appellant hereby designates the following parts of the record

which appellant believes necessary for consideration of the points upon which it intends to rely in this appeal, and which appellant desires to be printed:

1. Page 1, Names and addresses of attorneys.
2. Pages 2 to 7, Complaint, omitting title of court and cause and excerpts from Internal Revenue Code on the reverse of page 7.
3. Page 8, Motion to Dismiss omitting title of court and cause.
4. Page 10, Order Denying Defendant's Motion to Dismiss. [32]
5. Page 11, Notice of Ruling, omitting title of court and cause.
6. Pages 13 and 14, Stipulation, omitting title of court and cause.
7. Pages 18 and 19, Judgment, omitting title of court and cause.
8. Page 20, Written Notice of Entry of Judgment, omitting title of court and cause.
9. Page 22, Notice of Appeal, omitting title of court and cause.
10. Pages 23 and 24, Appellant's Designation of Contents of Record on Appeal, omitting title of court and cause.
11. Certificate of Clerk.
12. Appellant's Statement of Points to be Relied Upon on Appeal, captioned "In the United States Court of Appeals for the Ninth Circuit" and filed concurrently with this Designation.
13. This Designation.

Dated: This 1st day of September, 1949.

JAMES M. CARTER,
United States Attorney.

E. H. MITCHELL and
EDWARD R. McHALE,
Assistant United States
Attorneys. [33]

EUGENE HARPOLE,
ROBERT D. SCOTT and
JAMES D. PETTUS,
Special Attorneys, Bureau
of Internal Revenue.

By /s/ ROBERT D. SCOTT,
Attorneys for Appellant,
United States of America.

Received copy of the within Appellant's Designation of Parts of Record Believed Necessary for Consideration on Appeal and to be Printed this 1 day of September, 1949.

GUTHRIE, DARLING &
SHATTUCK,

By /s/ EDWARD SHATTUCK,
Attorneys for Appellee.

[Endorsed]: Filed U.S.C.A. Sept. 9, 1949. [34]

